

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN MARCHISOTTO,

Plaintiff,

- against -

**CITY OF NEW YORK and
CARLA HOLLYWOOD,**

Defendants.

x

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:

: 05 Civ. 2699 (RLE)

:

:

: AFFIRMATION OF DAVID M. FISH

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:

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x

David M. Fish, an attorney duly licensed to practice law before all Courts of the State of New York, affirms the following under penalty of perjury:

1. I am the attorney for the plaintiff, John Marchisotto, in the referenced matter.
2. My background and trial experience is as follows.
3. I received my J.D. degree from New York Law School in February 1996; I attended night school while working full-time during the day at a law firm that specialized in labor and employment law.
4. I am admitted to all New York Courts, the Court of Appeals for the Second Circuit, and the United States Supreme Court.
5. I am highly experienced in civil rights and discrimination law, criminal law and commercial litigation.
6. I have been practicing primarily in the field of labor and employment law for over twelve years, have handled hundreds of litigations and have tried approximately 35 state and federal court matters.
7. Today, in addition to my active trial practice, I am an adjunct professor of law at New York

Law School (continuously since 2003), where I also served as an advisor to the school's Moot Court Association.

8. I am President of the Executive Board of the Employment Rights Section of the American Association for Justice (AAJ, formally ATLA), and serve on the National Employment Lawyers Association's Sexual Harassment Advisory Program.
9. I am a past National Employment Lawyers Association/New York Chapter (NELA/NY) Executive Board member, and was editor of the NELA/NY Employee Advocate newsletter.
10. This year, I was appointed co-chair of the New York State Bar Association's Equal Employment Opportunity Committee.
11. Also this year, after a lengthy application process, I was appointed to New York City's 18B Assigned Counsel Plan, allowing me to represent criminal defendants unable to afford counsel.
12. In both 2007 and 2008, I was named a New York SuperLawyer®.
13. I am often asked to lecture and write on a wide variety of sub-specialties within the field of labor and employment law and constitutional rights, and invited to teach trial advocacy skills.
14. I am seeking compensation for my firm for the time that I spent on this case from the time I was retained as counsel on March 29, 2006.
15. I was chief trial counsel on this matter and did all of the work on this matter since that time (including finalizing discovery, pretrial preparation, trial, post-trial motion, opposition to appeal to Second Circuit, fee application) without the assistance of any other attorney or support staff.
16. All of my work is outlined in the attached time records (See Exhibit A to this Affirmation),

almost all prepared contemporaneously with the work performed.

17. In entries where time was entered immediately after the work was performed, I estimated or “rounded” the time to less than the time actually performed. That is my practice with all clients who pay by the hour.
18. One entry I do not recognize and, accordingly, it would be fair to deduct it from my total: Entry 1717 on August 29, 2007 for \$183.22.
19. My billing rates and fee award requested in this application (\$400/hour) are consistent or less than what attorneys with my experience typically charge.
20. Plaintiff’s invoices for his necessary litigation costs are also attached as Exhibit A.
21. Finally, I note that I repeatedly attempted to resolve this case and my firm’s (and Mark Stumer’s firm’s) fees with the defendants, rather than burden the Court with this application.
22. Back on April 16, 2007, I sent a fax to defendants’ counsel stating:

“This is to confirm that, on Friday, April 13, 2007, I suggested that the City drop any plans to appeal, that I send you the time records for my firm and Mark Stumer’s firm, and we agree to a total settlement of this matter [\$300,000 jury award + (agreed attorneys’ fees) = total settlement].

You indicated – despite the Court’s denial of your oral post-trial motions, and 23-page April 11, 2007 Memorandum Opinion & Order denying your written post-trial motions in their entirety – that the City plans to pursue an appeal.

Based on the Court’s Memorandum Opinion & Order, and existing Second Circuit case law, we believe any appeal would be frivolous, is simply a delay tactic, and *only serves to increase attorney’s fees, something we wish to avoid.*


I sincerely hope you will reconsider your apparent decision to file an appeal and further delay this matter.”

23. Defendants refused to engage in discussions and commenced their appeal to the Second

Circuit.

24. After the appeal, and this Court's Judgment was affirmed on November 7, 2008, the defendants agreed to discuss a settlement and, on November 17, 2008, at 5:07 p.m., after a fee agreement was negotiated for the past week – and was finally agreed to in principle – defendants' offer was withdrawn.
25. Since April 2007, I made every effort to avoid inconveniencing the Court with this application.
26. Under these circumstances, it is more than fair and reasonable that my firm be awarded the sum of \$96,284.54 in legal fees and costs in this action, including this fee application.
27. It is respectfully requested that this Court grant this counsel fee application in its entirety.

Dated: New York, New York
November 19, 2008



David M. Fish

11/19/2008
2:23 PMDavid M. Fish -- Counselor and Attorney at Law
Slip Listing

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Selection Criteria

| | |
|---------------------|----------------------------|
| Slip Classification | Open |
| Clie. Selection | Include: Marchisotto, John |

Rate Info - identifies rate source and level

| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|----------------|----------------|---|---|--|----------------------------------|------------|
| 566 | TIME | | | David M. Fish | 0.33 | 400.00 | 133.33 |
| | 3/29/2006 | | | Preparation | 0.00 | C@1 | |
| | Billed | G:10119 | 4/4/2006 | Marchisotto, John | 0.00 | | |
| | | | Preparation, filing and service of Notice of Appearance | | 0.00 | | |
| 577 | TIME | | | David M. Fish | 0.08 | 400.00 | 33.33 |
| | 4/3/2006 | | | Deposition | 0.00 | C@1 | |
| | Billed | G:10138 | 5/3/2006 | Marchisotto, John | 0.00 | | |
| | | | Schedule Marchisotto deposition | | 0.00 | | |
| 622 | TIME | | | David M. Fish | 1.68 | 400.00 | 671.56 |
| | 4/19/2006 | | | Review | 0.00 | C@1 | |
| | Billed | G:10138 | 5/3/2006 | Marchisotto, John | 0.00 | | |
| | | | Review Carla Hollywood deposition transcript | | 0.00 | | |
| 626 | TIME | | | David M. Fish | 6.96 | 400.00 | 2784.22 |
| | 4/24/2006 | | | Deposition | 0.00 | C@1 | |
| | Billed | G:10138 | 5/3/2006 | Marchisotto, John | 0.00 | | |
| | | | Review documents; meet with Marchisotto to prepare him for deposition | | 0.00 | | |
| 634 | TIME | | | David M. Fish | 0.22 | 400.00 | 86.00 |
| | 4/25/2006 | | | Conference | 0.00 | C@1 | |
| | Billed | G:10138 | 5/3/2006 | Marchisotto, John | 0.00 | | |
| | | | Conference with client re: deposition | | 0.00 | | |
| 646 | TIME | | | David M. Fish | 8.00 | 400.00 | 3200.00 |
| | 5/1/2006 | | | Deposition | 0.00 | C@1 | |
| | Billed | G:10138 | 5/3/2006 | Marchisotto, John | 0.00 | | |
| | | | Deposition of John Marchisotto | | 0.00 | | |
| 676 | TIME | | | David M. Fish | 0.53 | 400.00 | 212.11 |
| | 5/15/2006 | | | Review | 0.00 | C@1 | |
| | Billed | G:10159 | 6/1/2006 | Marchisotto, John | 0.00 | | |
| | | | Review psychological reports; copies to counsel | | 0.00 | | |
| 680 | TIME | | | David M. Fish | 0.38 | 400.00 | 150.22 |
| | 5/15/2006 | | | Conference | 0.00 | C@1 | |
| | Billed | G:10159 | 6/1/2006 | Marchisotto, John | 0.00 | | |
| | | | Conference with client with medical evaluations | | 0.00 | | |

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| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity | Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|--|----------------|-------------|---------------------|------------------|-----------------------------------|----------------------------|------------|
| 736 | TIME | | | David M. Fish | | 0.62 | 400.00 | 248.00 |
| | 6/7/2006 | 12:30 PM | | Review | | 0.00 | C@1 | |
| | Billed | G:10178 | 7/2/2006 | Marchisotto, John | | 0.00 | | |
| | Review client documents; copies to counsel | | | | | 0.00 | | |
| 754 | TIME | | | David M. Fish | | 0.14 | 400.00 | 56.00 |
| | 6/14/2006 | 11:30 AM | | Conference | | 0.00 | C@1 | |
| | Billed | G:10178 | 7/2/2006 | Marchisotto, John | | 0.00 | | |
| | Conference with client re: case status | | | | | 0.00 | | |
| 781 | TIME | | | David M. Fish | | 0.30 | 400.00 | 119.00 |
| | 6/22/2006 | 9:48 AM | 6/23/2006 | Phone Opp Atty | | 0.00 | C@1 | |
| | Billed | G:10178 | 7/2/2006 | Marchisotto, John | | 0.00 | | |
| | Telephone call with opposing Attorney; letter to Marchisotto | | | | | 0.00 | | |
| 800 | TIME | | | David M. Fish | | 0.18 | 400.00 | 70.78 |
| | 6/29/2006 | 10:37 AM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10178 | 7/2/2006 | Marchisotto, John | | 0.00 | | |
| | Draft letter to counsel re: social security authorization, trial date | | | | | 0.00 | | |
| 827 | TIME | | | David M. Fish | | 0.34 | 400.00 | 136.22 |
| | 7/10/2006 | 9:09 AM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | Draft letter to client with SSA release | | | | | 0.00 | | |
| 835 | TIME | | | David M. Fish | | 0.30 | 400.00 | 119.78 |
| | 7/12/2006 | 3:30 PM | | Conference | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | Conference with client | | | | | 0.00 | | |
| 837 | TIME | | | David M. Fish | | 1.73 | 400.00 | 690.78 |
| | 7/13/2006 | 8:25 AM | | Preparation | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | Preparation of portion of pre-trial order; discussion with client re: same | | | | | 0.00 | | |
| 841 | TIME | | | David M. Fish | | 8.60 | 400.00 | 3440.00 |
| | 7/13/2006 | 1:37 PM | 7/14/2006 | Preparation | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | Preparation of pre-trial order, file for trial | | | | | 0.00 | | |
| 842 | TIME | | | David M. Fish | | 5.09 | 400.00 | 2034.11 |
| | 7/14/2006 | 8:14 AM | | Meeting | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | Meeting with client to finalize pre-trial order | | | | | 0.00 | | |
| 866 | TIME | | | David M. Fish | | 0.34 | 400.00 | 136.22 |
| | 7/23/2006 | 4:13 PM | | Correspondence | | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | | 0.00 | | |
| | E-mail to opposing counsel re: trial date, | | | | | 0.00 | | |

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| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|----------------|----------------|---|---|--|----------------------------------|------------|
| | | | amended pre-trial order | | | | |
| 868 | TIME | | | David M. Fish | 9.09 | 400.00 | 3634.11 |
| | 7/24/2006 | 12:51 PM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | 0.00 | | |
| | | | Second letter to court seeking adjournment; discussions with client and opposing counsel; preparation for trial | | 0.00 | | |
| 871 | TIME | | | David M. Fish | 2.49 | 400.00 | 997.00 |
| | 7/25/2006 | 7:14 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial; discussion with court, counsel, client re: transferring case to magistrate judge | | 0.00 | | |
| 892 | TIME | | | David M. Fish | 0.16 | 400.00 | 64.44 |
| | 7/28/2006 | 10:44 AM | | Conference | 0.00 | C@1 | |
| | Billed | G:10201 | 7/31/2006 | Marchisotto, John | 0.00 | | |
| | | | Conference with client re: trial strategy | | 0.00 | | |
| 944 | TIME | | | David M. Fish | 0.17 | 400.00 | 67.67 |
| | 8/16/2006 | 10:39 AM | | Correspondence | 0.00 | C@1 | |
| | Billed | G:10224 | 9/1/2006 | Marchisotto, John | 0.00 | | |
| | | | E-mail to client re: trial preparation | | 0.00 | | |
| 988 | TIME | | | David M. Fish | 0.39 | 400.00 | 157.67 |
| | 9/11/2006 | 12:47 PM | | Review | 0.00 | C@1 | |
| | Billed | G:10242 | 10/2/2006 | Marchisotto, John | 0.00 | | |
| | | | Review disability hearing minutes | | 0.00 | | |
| 1022 | TIME | | | David M. Fish | 1.29 | 400.00 | 514.11 |
| | 9/21/2006 | 2:37 PM | | Meeting | 0.00 | C@1 | |
| | Billed | G:10242 | 10/2/2006 | Marchisotto, John | 0.00 | | |
| | | | Meeting with client to discuss trial | | 0.00 | | |
| 1064 | TIME | | | David M. Fish | 1.42 | 400.00 | 568.78 |
| | 10/9/2006 | 1:19 PM | | Review | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | | | Review file in preparation for pretrial conference | | 0.00 | | |
| 1066 | TIME | | | David M. Fish | 3.31 | 400.00 | 1323.44 |
| | 10/10/2006 | 11:49 AM | | Court | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | | | Pretrial conference; review joint pretrial order | | 0.00 | | |
| 1067 | TIME | | | David M. Fish | 0.16 | 400.00 | 64.11 |
| | 10/10/2006 | 12:57 PM | | Conference | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | | | Conference with client re: pretrial conference | | 0.00 | | |

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| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|---|----------------|-------------|---|--|----------------------------------|------------|
| 1069 | TIME | | | David M. Fish | 0.33 | 400.00 | 133.33 |
| | 10/11/2006 | | | Draft | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | Revisions to joint pretrial order | | | | 0.00 | | |
| 1083 | TIME | | | David M. Fish | 0.69 | 400.00 | 277.89 |
| | 10/20/2006 | | | Review | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | Review client documents relating to disability application | | | | 0.00 | | |
| 1108 | TIME | | | David M. Fish | 0.75 | 400.00 | 300.33 |
| | 10/27/2006 | | | Preparation | 0.00 | C@1 | |
| | Billed | G:10263 | 11/1/2006 | Marchisotto, John | 0.00 | | |
| | Misc. trial preparation | | | | 0.00 | | |
| 1152 | TIME | | | David M. Fish | 1.03 | 400.00 | 412.89 |
| | 11/21/2006 | | | Preparation | 0.00 | C@1 | |
| | Billed | G:10286 | 11/30/2006 | Marchisotto, John | 0.00 | | |
| | Preparation of retaliation jury instructions | | | | 0.00 | | |
| 1156 | TIME | | | David M. Fish | 0.22 | 400.00 | 87.89 |
| | 11/27/2006 | | | Draft | 0.00 | C@1 | |
| | Billed | G:10286 | 11/30/2006 | Marchisotto, John | 0.00 | | |
| | Draft letter to client re: confirmed new trial date | | | | 0.00 | | |
| 1161 | TIME | | | David M. Fish | 0.11 | 400.00 | 45.78 |
| | 11/28/2006 | | | Conference | 0.00 | C@1 | |
| | Billed | G:10286 | 11/30/2006 | Marchisotto, John | 0.00 | | |
| | Conference with client re: medical board exam, new trial date. | | | | 0.00 | | |
| 1164 | TIME | | | David M. Fish | 0.17 | 400.00 | 66.11 |
| | 11/29/2006 | | | Review | 0.00 | C@1 | |
| | Billed | G:10286 | 11/30/2006 | Marchisotto, John | 0.00 | | |
| | Review medical records; copies to counsel | | | | 0.00 | | |
| 1176 | TIME | | | David M. Fish | 0.57 | 400.00 | 226.89 |
| | 12/6/2006 | | | Draft | 0.00 | C@1 | |
| | Billed | G:10303 | 12/29/2006 | Marchisotto, John | 0.00 | | |
| | Draft letter to client re: trial preparation; misc. trial preparation | | | | 0.00 | | |
| 1193 | TIME | | | David M. Fish | 0.08 | 400.00 | 33.33 |
| | 12/14/2006 | | | Phone client | 0.00 | C@1 | |
| | Billed | G:10303 | 12/29/2006 | Marchisotto, John | 0.00 | | |
| | Phone call from client re: trial preparation | | | | 0.00 | | |

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| Slip ID | Dates and Time Posting Status Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|--|--|--|----------------------------------|------------|
| 1200 | TIME 12/19/2006 3:27 PM Billed G:10303 12/29/2006 Draft proposed voir dire questions | David M. Fish Draft Marchisotto, John | 0.83 0.00 0.00 0.00 | 400.00 C@1 | 330.89 |
| 1216 | TIME 12/29/2006 10:25 AM Billed G:10313 2/1/2007 Letter to counsel re: witness subpoenas | David M. Fish Correspondence Marchisotto, John | 0.21 0.00 0.00 0.00 | 400.00 C@1 | 84.44 |
| 1218 | TIME 1/1/2007 10:37 AM Billed G:10313 2/1/2007 Draft request to charge | David M. Fish Draft Marchisotto, John | 4.67 0.00 0.00 0.00 | 400.00 C@1 | 1869.33 |
| 1222 | TIME 1/2/2007 11:05 AM Billed G:10313 2/1/2007 Finalize proposed voir dire; revise request to charge; outline motion in limine | David M. Fish Preparation Marchisotto, John | 3.44 0.00 0.00 0.00 | 400.00 C@1 | 1377.67 |
| 1225 | TIME 1/3/2007 9:00 AM Billed G:10313 2/1/2007 Preparation of jury instructions and other pre-trial documents | David M. Fish Preparation Marchisotto, John | 3.62 0.00 0.00 0.00 | 400.00 C@1 | 1448.00 |
| 1229 | TIME 1/4/2007 9:50 AM Billed G:10313 2/1/2007 Phone call to court law clerk re: pre-trial procedures; research likelihood of successful motion in limine; discussion with client re: trial prep | David M. Fish Correspondence Marchisotto, John | 1.20 0.00 0.00 0.00 | 400.00 C@1 | 480.89 |
| 1292 | EXP 1/8/2007 WIP Delivery Cost - messenger proposed jury instructions and voir dire | David M. Fish Delivery Marchisotto, John | 1 | 13.63 | 13.63 |
| 1239 | TIME 1/9/2007 9:12 AM Billed G:10313 2/1/2007 Preparation for trial; review files for trial exhibits | David M. Fish Preparation Marchisotto, John | 2.33 0.00 0.00 0.00 | 400.00 C@1 | 931.78 |
| 1242 | TIME 1/10/2007 8:33 AM Billed G:10313 2/1/2007 Review Marchisotto deposition transcript; trial preparation with client | David M. Fish Review Marchisotto, John | 6.35 0.00 0.00 0.00 | 400.00 C@1 | 2541.78 |

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| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|----------------|----------------|--|---|--|----------------------------------|------------|
| 1244 | TIME | | | David M. Fish | 1.31 | 400.00 | 522.44 |
| | 1/11/2007 | 11:17 AM | | Review | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Review audio tapes of October 5, 2004 meeting with Deputy Inspector Jones, June 3, 2004 Bahno-Gutch interview tape, April 27, 2004 IAB Investigation, | | 0.00 | | |
| 1246 | TIME | | | David M. Fish | 3.17 | 400.00 | 1266.89 |
| | 1/12/2007 | 10:55 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation of trial exhibits | | 0.00 | | |
| 1247 | TIME | | | David M. Fish | 2.37 | 400.00 | 948.33 |
| | 1/13/2007 | 10:05 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation of opening, direct examinations | | 0.00 | | |
| 1252 | TIME | | | David M. Fish | 4.54 | 400.00 | 1816.11 |
| | 1/15/2007 | 9:57 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial; meeting with client | | 0.00 | | |
| 1256 | TIME | | | David M. Fish | 8.48 | 400.00 | 3392.67 |
| | 1/16/2007 | 9:48 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Misc. trial preparation and assembly of trial notebook; scheduling of witnesses (Dr. Robert Conciatori) | | 0.00 | | |
| 1258 | TIME | | | David M. Fish | 6.00 | 400.00 | 2401.22 |
| | 1/17/2007 | 10:25 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial - trial exhibits, witness directs, discussions with client | | 0.00 | | |
| 1260 | TIME | | | David M. Fish | 2.34 | 400.00 | 937.00 |
| | 1/18/2007 | 9:51 AM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial - finalize direct examination | | 0.00 | | |
| 1262 | TIME | | | David M. Fish | 4.94 | 400.00 | 1977.56 |
| | 1/18/2007 | 8:47 PM | 1/19/2007 | Preparation | 0.00 | C@1 | |
| | Billed | G:10313 | 2/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial - prepare deposition books, review defendants' exhibits, motion letter to Judge Ellis, prepare plaintiff's exhibits | | 0.00 | | |
| 1291 | EXP | | | David M. Fish | 1 | 10.14 | 10.14 |
| | 1/19/2007 | | | Delivery | | | |
| | | | WIP | Marchisotto, John | | | |

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| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|-----------|----------------|----------------|---|---|--|----------------------------------|------------|
| | | | Delivery Cost - Messenger trial exhibits to corporation counsel's office | | | | |
| 1263 | TIME | | | David M. Fish | 6.34 | 400.00 | 2537.11 |
| 1/19/2007 | 6:41 AM | | | Preparation | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Preparation for trial - finalize letter to Judge Ellis, meeting with client to prepare for first day of trial | | 0.00 | | |
| 1265 | TIME | | | David M. Fish | 2.17 | 400.00 | 867.67 |
| 1/21/2007 | 6:11 AM | | | Preparation | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Misc. trial preparation | | 0.00 | | |
| 1266 | TIME | | | David M. Fish | 15.33 | 400.00 | 6131.78 |
| 1/22/2007 | 6:12 AM | | | Court | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Trial preparation; motion in limine argument; jury selection; trial; preparation for Gutch direct | | 0.00 | | |
| 1267 | TIME | | | David M. Fish | 16.04 | 400.00 | 6414.22 |
| 1/23/2007 | 4:59 AM | | | Court | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Court Appearance (trial day 2); trial preparation | | 0.00 | | |
| 1269 | TIME | | | David M. Fish | 13.25 | 400.00 | 5300.44 |
| 1/24/2007 | 7:02 AM | | | Court | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Court Appearance (trial day 3); review jury charge; draft summation notes | | 0.00 | | |
| 1270 | TIME | | | David M. Fish | 12.22 | 400.00 | 4888.11 |
| 1/25/2007 | 7:04 AM | | | Court | 0.00 | C@1 | |
| Billed | G:10313 | 2/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Review proposed jury charge; Court Appearance (trial day 4) | | 0.00 | | |
| 1283 | TIME | | | David M. Fish | 0.48 | 400.00 | 191.89 |
| 2/2/2007 | 8:57 AM | | | Review | 0.00 | C@1 | |
| Billed | G:10325 | 3/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Review defendants' motion for dismissal/new trial | | 0.00 | | |
| 1285 | TIME | | | David M. Fish | 0.50 | 400.00 | 200.00 |
| 2/4/2007 | | | | Draft | 0.00 | C@1 | |
| Billed | G:10325 | 3/1/2007 | | Marchisotto, John | 0.00 | | |
| | | | Outline response to defendants' post-trial motion | | 0.00 | | |

11/19/2008
2:23 PMDavid M. Fish -- Counselor and Attorney at Law
Slip Listing

Page 8

| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity | Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|----------------|----------------|---|---------------------|------------------|-----------------------------------|----------------------------|------------|
| 1286 | TIME | | | David M. Fish | | 3.47 | 400.00 | 1386.00 |
| | 2/5/2007 | 8:59 AM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10325 | 3/1/2007 | Marchisotto, John | | 0.00 | | |
| | | | Draft opposition to defendants' post-trial motions | | | 0.00 | | |
| 1290 | TIME | | | David M. Fish | | 1.83 | 400.00 | 731.00 |
| | 2/6/2007 | 12:23 PM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10325 | 3/1/2007 | Marchisotto, John | | 0.00 | | |
| | | | Draft/revise opposition to defendants' post-trial motion | | | 0.00 | | |
| 1295 | TIME | | | David M. Fish | | 0.68 | 400.00 | 273.89 |
| | 2/7/2007 | 8:55 AM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10325 | 3/1/2007 | Marchisotto, John | | 0.00 | | |
| | | | Revisions to memorandum of law in opposition to defendants' post-trial motion | | | 0.00 | | |
| 1307 | TIME | | | David M. Fish | | 0.08 | 400.00 | 33.33 |
| | 2/13/2007 | | | Review | | 0.00 | C@1 | |
| | Billed | G:10325 | 3/1/2007 | Marchisotto, John | | 0.00 | | |
| | | | Review counsel's letter seeking permission for reply brief | | | 0.00 | | |
| 1343 | TIME | | | David M. Fish | | 1.79 | 400.00 | 714.44 |
| | 3/1/2007 | 2:10 PM | | Legal Research | | 0.00 | C@1 | |
| | Billed | G:10340 | 3/30/2007 | Marchisotto, John | | 0.00 | | |
| | | | Legal research, begin outlining attorneys' fees application | | | 0.00 | | |
| 1446 | TIME | | | David M. Fish | | 0.19 | 400.00 | 76.22 |
| | 4/11/2007 | 7:13 PM | | Review | | 0.00 | C@1 | |
| | Billed | G:10358 | 4/30/2007 | Marchisotto, John | | 0.00 | | |
| | | | Review Memorandum and Order on defendants' post-trial motion | | | 0.00 | | |
| 1449 | TIME | | | David M. Fish | | 0.17 | 400.00 | 66.67 |
| | 4/13/2007 | | | Phone Opp Atty | | 0.00 | C@1 | |
| | Billed | G:10358 | 4/30/2007 | Marchisotto, John | | 0.00 | | |
| | | | Telephone call with Ms. Calistro in attempt to resolve matter prior to City's contemplated appeal | | | 0.00 | | |
| 1504 | TIME | | | David M. Fish | | 0.24 | 400.00 | 96.89 |
| | 5/9/2007 | 1:58 PM | | Review | | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | | 0.00 | | |
| | | | Review correspondence from Second Circuit Clerk; file Acknowledgment Letter | | | 0.00 | | |
| 1505 | TIME | | | David M. Fish | | 0.23 | 400.00 | 90.56 |
| | 5/21/2007 | 7:53 AM | | Review | | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | | 0.00 | | |

11/19/2008
2:23 PMDavid M. Fish -- Counselor and Attorney at Law
Slip Listing

Page 9

| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|----------------|----------------|---|---|--|----------------------------------|------------|
| | | | Review Pre-Argument Conference Notice and Order; copy to client | | 0.00 | | |
| 1513 | TIME | | | David M. Fish | 0.10 | 400.00 | 41.33 |
| | 5/22/2007 | 12:22 PM | | Phone client | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | 0.00 | | |
| | | | Phone call from client re: appeal process | | 0.00 | | |
| 1528 | TIME | | | David M. Fish | 0.14 | 400.00 | 57.78 |
| | 5/30/2007 | 12:41 PM | | Phone client | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | 0.00 | | |
| | | | Phone call from client re: pre-argument conference | | 0.00 | | |
| 1533 | TIME | | | David M. Fish | 0.33 | 400.00 | 133.33 |
| | 5/31/2007 | | | Preparation | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation for second circuit pre-argument conference | | 0.00 | | |
| 1537 | TIME | | | David M. Fish | 2.00 | 400.00 | 800.00 |
| | 6/1/2007 | | | Court | 0.00 | C@1 | |
| | Billed | G:10376 | 6/4/2007 | Marchisotto, John | 0.00 | | |
| | | | Court Appearance | | 0.00 | | |
| 1613 | TIME | | | David M. Fish | 0.79 | 400.00 | 314.00 |
| | 7/11/2007 | 11:14 AM | | Phone Opp Atty | 0.00 | C@1 | |
| | WIP | | | Marchisotto, John | 0.00 | | |
| | | | Telephone call with opposing Attorney re: appeal record exhibits; search for exhibits | | 0.00 | | |
| 1625 | TIME | | | David M. Fish | 0.84 | 400.00 | 335.11 |
| | 7/23/2007 | 5:11 PM | | Review | 0.00 | C@1 | |
| | WIP | | | Marchisotto, John | 0.00 | | |
| | | | Review Brief of Appellant City of New York | | 0.00 | | |
| 1644 | TIME | | | David M. Fish | 1.45 | 400.00 | 578.78 |
| | 7/31/2007 | 2:15 PM | | Preparation | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Preparation of Appeal; discussion with appeal printer; prepare outline | | 0.00 | | |
| 1657 | TIME | | | David M. Fish | 2.07 | 400.00 | 827.89 |
| | 8/4/2007 | 3:55 PM | | Draft | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Research/draft Brief of Appellee | | 0.00 | | |
| 1658 | TIME | | | David M. Fish | 4.54 | 400.00 | 1815.11 |
| | 8/5/2007 | 9:04 AM | | Draft | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | 0.00 | | |
| | | | Draft Brief of Appellee | | 0.00 | | |

11/19/2008
2:23 PMDavid M. Fish -- Counselor and Attorney at Law
Slip Listing

Page 10

| Slip ID | Dates and Time | Posting Status | Description | Timekeeper Activity | Client Reference | Units DNB Time Est. Time Variance | Rate Rate Info Bill Status | Slip Value |
|---------|--|----------------|-------------|---------------------|------------------|-----------------------------------|----------------------------|------------|
| 1680 | TIME | | | David M. Fish | | 1.87 | 400.00 | 749.56 |
| | 8/12/2007 | 7:03 PM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Draft Brief of Appellee | | | | | 0.00 | | |
| 1696 | TIME | | | David M. Fish | | 1.75 | 400.00 | 700.00 |
| | 8/17/2007 | | | Draft | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Draft Brief of Appellee | | | | | 0.00 | | |
| 1697 | TIME | | | David M. Fish | | 2.00 | 400.00 | 800.00 |
| | 8/18/2007 | | | Draft | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Draft Brief of Appellee | | | | | 0.00 | | |
| 1698 | TIME | | | David M. Fish | | 2.15 | 400.00 | 859.67 |
| | 8/19/2007 | 8:41 AM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Draft Brief of Appellee, cite check | | | | | 0.00 | | |
| 1702 | TIME | | | David M. Fish | | 3.04 | 400.00 | 1215.89 |
| | 8/20/2007 | 12:35 PM | | Draft | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Draft/revise Brief of Appellee | | | | | 0.00 | | |
| 1703 | TIME | | | David M. Fish | | 3.21 | 400.00 | 1282.11 |
| | 8/21/2007 | 6:29 AM | | Preparation | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Final proof of Brief of Appellee; table of contents, table of authorities; to appellate printer for service and filing | | | | | 0.00 | | |
| 1717 | TIME | | | David M. Fish | | 0.46 | 400.00 | 183.22 |
| | 8/29/2007 | 8:07 AM | | Preparation | | 0.00 | C@1 | |
| | Billed | G:10402 | 10/1/2007 | Marchisotto, John | | 0.00 | | |
| | Preparation of subpoenas; letter to counsel | | | | | 0.00 | | |
| 2587 | TIME | | | David M. Fish | | 4.69 | 400.00 | 1875.89 |
| | 11/3/2008 | 5:57 AM | | Preparation | | 0.00 | C@1 | |
| | WIP | | | Marchisotto, John | | 0.00 | | |
| | Preparation for Second Circuit oral argument | | | | | 0.00 | | |
| 2589 | TIME | | | David M. Fish | | 2.82 | 400.00 | 1127.56 |
| | 11/4/2008 | 7:39 AM | | Court | | 0.00 | C@1 | |
| | WIP | | | Marchisotto, John | | 0.00 | | |
| | Oral argument, Second Circuit (including morning preparation) | | | | | 0.00 | | |
| 2603 | TIME | | | David M. Fish | | 0.58 | 400.00 | 233.89 |
| | 11/7/2008 | 10:28 AM | | Phone client | | 0.00 | C@1 | |
| | WIP | | | Marchisotto, John | | 0.00 | | |
| | Phone call with client re: summary order; | | | | | 0.00 | | |

11/19/2008
2:23 PMDavid M. Fish -- Counselor and Attorney at Law
Slip Listing

Page 11

| Slip ID | Dates and Time | Timekeeper | Units | Rate | Slip Value |
|---|----------------|-------------------|-----------|-------------|------------|
| Posting Status | | Activity | DNB Time | Rate Info | |
| Description | | Client | Est. Time | Bill Status | |
| | | Reference | Variance | | |
| letters to counsel re: judgment and fee application | | | | | |
| 2608 | TIME | David M. Fish | 0.54 | 400.00 | 216.78 |
| 11/10/2008 | 11:18 AM | Research | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Research re: entry of judgment with interest; discussion with clerk | | | 0.00 | | |
| 2617 | TIME | David M. Fish | 0.17 | 400.00 | 66.67 |
| 11/17/2008 | | Phone Opp Atty | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Telephone call with opposing Attorney re: judgment, attorneys fees | | | 0.00 | | |
| 2618 | TIME | David M. Fish | 3.93 | 400.00 | 1572.89 |
| 11/17/2008 | 5:53 PM | Draft | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Draft fee application memorandum of law and affirmation | | | 0.00 | | |
| 2621 | TIME | David M. Fish | 4.69 | 400.00 | 1875.44 |
| 11/18/2008 | 12:55 PM | Prep Pleadings | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Preparation of fee application papers (memorandum of law and accompanying research; discussion with judgment clerk | | | 0.00 | | |
| 2627 | TIME | David M. Fish | 1.24 | 400.00 | 494.11 |
| 11/19/2008 | 11:54 AM | Prep Pleadings | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Preparation of Marchisotto's Bill of Costs for Second Circuit | | | 0.00 | | |
| 2628 | TIME | David M. Fish | 6.66 | 400.00 | 2662.33 |
| 11/19/2008 | 1:39 PM | Prep Pleadings | 0.00 | C@1 | |
| WIP | | Marchisotto, John | 0.00 | | |
| Preparation of fee application; revisions to Fish affirmation, review Gupta affirmation, revisions to memorandum of law | | | 0.00 | | |
| Grand Total | | | | | |
| | | Billable | 241.12 | | 96467.76 |
| | | Unbillable | 0.00 | | 0.00 |
| | | Total | 241.12 | | 96467.76 |

MARK B. STUMER & ASSOCIATES, P.C.

200 PARK AVENUE SOUTH, SUITE 1511
NEW YORK, NEW YORK 10003
(212) 633-2225

Invoice

| DATE | INVOICE NO. |
|----------|-------------|
| 3/6/2005 | 12115617 |

| |
|---|
| TO: |
| Marchisotto, John 54 Dierauf Street Staten Island, NY 10312 |

| DESCRIPTION | AMOUNT |
|--|--------|
| Expenses: USDC Southern District Filing Fee | 250.00 |
| Expenses: United Lawyers Service Court Fees (\$15.00 x 6 = \$90) | 90.00 |
| Due on receipt. | |
| Total | |
| \$340.00 | |

MARK B. STUMER & ASSOCIATES, P.C.

200 PARK AVENUE SOUTH, SUITE 1511
 NEW YORK, NEW YORK 10003
 (212) 633-2225

Invoice

| DATE | INVOICE NO. |
|----------|-------------|
| 1/1/2006 | 12115833 |

| |
|---|
| TO: |
| Marchisotto, John 54 Dierauf Street Staten Island, NY 10312 |

| DESCRIPTION | AMOUNT |
|--|----------|
| Expenses: Deposition Stenographer/Transcript Fee (Carla Hollywood) | 915.12 |
| Expenses: Deposition Stenographer/Transcript Fee (Richard Gutch) | 1,240.80 |
| <div>Past Due. Please Remit</div> <div>Total \$2,155.92</div> | |

Claude Pompo, Ph.D.
Psychologist
197 Rensselaer Ave
Staten Island, NY 10312
Voice/Fax 718 605-5390

Invoice

| DATE | INVOICE # |
|----------|-----------|
| 2/7/2007 | 101 |

| DUE DATE |
|----------|
| 3/9/2007 |

BILL TO
John Marchisotto
54 Dierauf St
Staten Island, NY 10312

| Date | DESCRIPTION | AMOUNT |
|--------------|----------------------------|-----------------|
| 01/24/2007 | Case Preparation (3hrs) | 360.00 |
| 01/24/2007 | Court Appearance/Testimony | 640.00 |
| Total | | 1,000.00 |

ROBERT CONCIATORI, M.D.
71 TODD HILL ROAD, SUITE 201
STATEN ISLAND, NY 10314

(718) 767-2059

DEA # BC 2071291

LIC # 179693 (NY)

NAME

John Marchisotto

AGE

ADDRESS

DATE

4/12/07

Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND

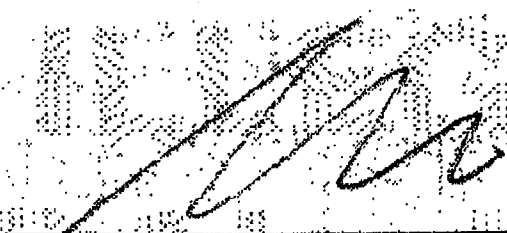
R

Tel In Cart

Kerrington 1/24/07

CARE OF John Marchisotto

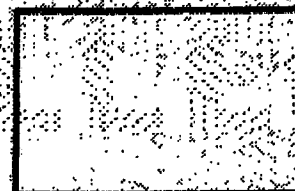
\$1,000



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UNLESS PRESCRIBER WRITES 'd a w' IN THE BOX BELOW.

Refill _____ times

NR _____ Label _____



Dispense As Written



4HPS1126965